IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1131 OF 2007

IN

APPEAL NO. 245 OF 2007

IN

WRIT PETITION NO. 2103 OF 2003

M/s Gala Construction Co. Pvt. Ltd. .. Appellant

V/s

Narayan Laxman Patil & Ors. .. Respondents.

Mr.J. Reis, Senior Advocate i/b Mr.R.N. Kachare for the Appellant.

Mr.S.A. Abhyankar i/b Ms.Anjali Helekar for Respondents No.1 and 2.

Mr.G.W. Mattos, A.G.P. for Respondents No.8 and 9.

None present for Respondents No.3 to 7, though served.

CORAM : R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATE : 26TH JUNE 2007

P.C. :

1. Heard.

2. Considering the fact that mutation entry has been carried out without prior adjudication of the rights and contentions of the paries by the competent court, prima facie case is made out for grant of interim relief in terms of prayer (a).

3. Our attention was sought to be drawn on the decision of the Apex Court in the case of **Saraswatibai Trimbak Gaikwad v. Damodhar D. Motiwale, reported in (2002) 4 SCC 481**. In the said decision, the Apex Court has held that section 85 of the Bombay Tenancy and Agricultural Lands Act, 1948 does not empower the civil court to decide the matters which are required to be dealt with by the Tribunal under the said Act. The point in issue in the matter in hand at this stage merely relates to prima facie case to be ascertained as to whether the appellant has made out the same for grant of relief asked for, and as the authority, who has passed the order and which has been challenged in the matter, it is prima facie disclosed that the said authority could not have passed the said order without prior adjudication of the rights of the parties by the competent court or authority, therefore, the question of applicability of the decision of the Apex Court at this stage to the matter in hand does not arise.

4. In the circumstances, the notice of motion is made absolute in terms of prayer (a). No order as to costs.

(R.M.S. KHANDEPARKAR, J.)

(D.G. KARNIK, J.)